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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Implementation of the	)	
Telecommunications Act of 1996	)	CC Docket No. 96-115
	)	
Telecommunications Carriers' Use	)	
of Customer Proprietary Network	)	
Information and Other Information	)	

GTE'S COMMENTS

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on behalf of its affiliated domestic
telephone operating and wireless
companies

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GTE'S COMMENTS

GTE Service Corporation ("GTE"), on behalf of its affiliated domestic telephone operating and wireless companies, respectfully submits its comments in response to the above-captioned Notice of Proposed Rulemaking.[1] Section 702 of the Telecommunications Act of 1996 ("1996 Act") adds a new Section 222 to the Communications Act of 1934, which limits the use of customer proprietary network information ("CPNI") by telecommunications carriers. As discussed herein, the Commission should interpret this provision in a manner that enhances the ability of carriers to meet their customers' needs and minimizes regulatory burdens.

I. INTRODUCTION AND SUMMARY

Section 222(c)(1) provides that "a telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service" shall only use this information "in its provision of the

[1] FCC 96-221 (released May 16, 1996) ("*NPRM*").

telecommunications service from which such information is derived." The *NPRM* seeks comment on procedures for notifying customers of their right to restrict the use of their CPNI,[2] and tentatively concludes that "it would be reasonable to interpret Section 222 as distinguishing among telecommunications services based on [the] traditional service distinctions" of local (including short-haul toll), interexchange (also including short-haul toll), and commercial mobile radio services (CMRS).[3] The Commission also asks whether the *Computer III* CPNI rules should be retained,[4] and inquires what regulations may be necessary to assure that subscriber list information is provided in accordance with the requirements of Section 222(e).

As discussed herein notifications should be sufficient to inform customers that they may restrict use of their CPNI. However, Section 222(c)(1) -- unlike Section 222(c)(2) -- does not require affirmative written or oral consent to such use; it merely requires "approval." Customers in existing business relationships generally expect that their service provider will have access to and use of their CPNI, and have correspondingly diminished concerns that their privacy will be violated by such access and use. In addition, as the Commission has acknowledged, the great majority of customers will not bother returning affirmative consent forms even though they have no objection to use of their CPNI. The Commission should therefore adopt an "opt

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[2] *NPRM*, ¶ 28.

[3] *Id.* ¶ 22.

[4] *Id.*, ¶ 41.

in" approach to customer approval of CPNI use. Under this approach, carriers would provide notifications, through billing inserts or other means, to each of their customers. The notifications would provide either a toll-free call-in number or pre-paid postcard for customers to use if they wish to invoke the CPNI restriction. For start-up service, the notification would be part of the service initiation package. If the customer does not restrict use of its CPNI within 30 days, the carrier and its affiliates could treat the customer as having approved employment of its CPNI as described in the carrier's notification. Of course, customers should be permitted to restrict use of their CPNI even after the 30-day period has elapsed, and carriers would then be required to honor such requests.

GTE agrees with the Commission that the term, "telecommunications service," as used in Section 222, should be interpreted broadly.[5] A broad interpretation is consistent with the language of the statute and its legislative history and is needed to permit carriers to respond to customer desires for one-stop shopping. A narrower interpretation, in contrast, would conflict with a sensible reading of congressional intent and raise serious constitutional concerns under the First and Fifth Amendments. GTE accordingly supports allowing carriers to use information

[5] GTE also agrees with the Commission's implication that carriers may use aggregate CPNI for purposes allowed by Section 222(c)(1) without making that information available to third parties. *See NPRM*, ¶ 37 (stating that "LECs ... may use aggregate CPNI for purposes other than providing telecommunications service only if the aggregate CPNI is made available to others on a reasonable and nondiscriminatory basis.").

obtained in the provision of telecommunications services in marketing other offerings. If the Commission nonetheless believes that Section 222 at least initially requires some categorization of services, then it should not disaggregate service offerings beyond the local and long distance categories proposed in the *NPRM*. Establishing a distinct category for CMRS would hinder the offering of such valuable offerings as GTE's Tele-Go® service, which combine mobile and fixed applications.

Because the notification procedure recommended by GTE will assure that all customers are fully aware of their CPNI rights, the *Computer III* CPNI rules will be superfluous, and should be eliminated. Moreover, in a competitive marketplace, the intrusive password protection requirement imposed in *Computer III* is needlessly burdensome and would place carriers subject thereto at a considerable disadvantage.

Finally, the Commission should reject claims that subscriber list information must be provided at rates based on incremental cost; such a requirement would be unwarranted and contrary to congressional intent. Local exchange carriers (LECs) must be permitted to charge rates that recover the costs of gathering and maintaining such information, the costs of providing it to publishers, and the value of the information. Detailed rules regarding subscriber list information are unnecessary. The vast majority of LECs act reasonably, and they should not be required to change existing practices and processes as long as they treat all publishers in a reasonable, nondiscriminatory fashion

II. AN "OPT IN" APPROACH TO RESTRICTING THE USE OF CPNI BEST SERVES THE NEEDS OF BOTH CARRIERS AND CUSTOMERS.

The *NPRM* tentatively concludes that the Commission should "require a telecommunications carrier seeking approval for CPNI use from its customers to notify those customers of their rights to restrict access to their CPNI."[6] It seeks comment on whether the Commission "should allow such notification to be given orally and simultaneously with a carrier's attempt to seek approval for CPNI use, or whether [it] should instead require an advance written notification."[7] This advance written notification would consist of "a postcard which the customer could sign and return to the carrier to authorize CPNI use."[8]

GTE fully supports the Commission's goals of ensuring that customers are informed of their right to limit the use of their CPNI, and making it simple for customers to exercise that right. However, an approval mechanism that requires customers to affirmatively consent to marketing in writing would result in carriers being unable to market to a large number of customers who have no objection to use of their CPNI within the LEC, but simply cannot be bothered signing and returning a

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[6] *NPRM*, ¶ 28. GTE agrees with the Commission (*NPRM*, ¶ 26) that Section 222(d)(1) enables carriers to use CPNI, without approval, to perform installation, maintenance, and repair for any telecommunications service. These operational functions do not implicate privacy concerns.

[7] *Id.*

[8] *Id.*, ¶ 29.

postcard.[9] Because, as explained below, customers in an ongoing business relationship generally expect carriers to be able to use their CPNI, a better approach would be to inform customers of their rights and assume consent unless a customer affirmatively restricts disclosure.

Such an "opt in" approach to prohibitions on CPNI use would best serve the needs of both carriers and customers. Specifically, carriers might notify all customers of their option to restrict the use of their CPNI, and should provide customers with a means of communicating a decision to exercise that option, such as a pre-paid postcard or a local or toll-free call-in number.[10] Thirty days after the notification, and indefinitely thereafter so long as the customer has not invoked the CPNI restriction, the carrier may treat the customer as having approved employment of CPNI by the carrier and its affiliates, as described in the carrier's notification.

This "opt in" plan is consistent with the plain language and legislative history of Section 222(c)(1), as well as a number of policy considerations. It is well-settled that

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[9] Based on GTE's recent experience with inquiries addressed to substantial numbers of residential and small business customers in California, Washington and Florida, in GTE's estimation no more than 27 percent of residential customers are likely to provide a written response to the company's request, and the response rate of residential customers might be as low as five percent. As for small business customers, absent a personal visit, the most likely response rate would not exceed five percent.

[10] Such notification could be either written or oral. As the Commission notes, the structure of Section 222(c)(1) and (2) strongly supports a conclusion that both oral notification, and oral approval, are consistent with the statute. *See NPRM*, ¶ 30.

"[t]he plain meaning of legislation should be conclusive, except 'in the rare cases [in which] the literal application of the statute will produce a result demonstrably at odds with the intention of its drafters.'"[11] The commonly accepted, dictionary definition[12] of "approve" is "to confirm or agree to officially."[13] GTE's plan comports with this definition because customers are first notified that they may protect their privacy rights, and are afforded an opportunity to do so. Given the existence of a carrier-customer relationship, it is entirely reasonable to presume assent where the customer does not provide notice of a restriction.

Further, this definition of "approval" is consistent with the intention of the drafters of Section 222(c)(1), as evidenced by the structure of that provision. Section 222(c)(2) requires an "affirmative written request" from the customer before CPNI may be disclosed to any person other than the carrier. In contrast, Section 222(c)(1) only requires "approval" of the customer. Because Congress clearly specified affirmative consent when it intended that to be a requirement, it is permissible to interpret Section 222(c)(1) as not mandating affirmative consent.

Congress's decision not to require affirmative consent in Section 222(c)(1) makes perfect sense because it recognizes that there is an existing business

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[11] *United States v. Ron Pair Enterprises, Inc.*, 109 S. Ct. 1026, 1031 (1989) (quoting *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982)).

[12] *See United States v. John Doe, Inc. I*, 481 U.S. 102, 109 n.4 (1987) (using the dictionary definition of a term as a means of statutory interpretation).

[13] *Webster's II New Riverside University Dictionary* (1988).

relationship between the customer and the carrier. In this context, the Commission has held that "a solicitation to someone with whom a prior business relationship exists does not adversely affect subscriber privacy interests. Moreover, such a solicitation can be deemed to be invited or permitted by a subscriber in light of the business relationship."[14]

Interpreting silence as consent also is consistent with Commission precedent and sound policy. For example, in addressing disclosure of billing name and address (BNA) to third parties, the Commission held that assent could be inferred in the absence of an affirmative request for non-disclosure -- even for subscribers with unlisted and non-published numbers -- once customers had been given notice that disclosure would occur in certain circumstances:

> we ... allow disclosure of the BNA of any unlisted and nonpublished subscriber unless that subscriber affirmatively requests that its BNA not be disclosed. We also permit LECs to presume that unlisted and nonpublished end users consent to disclosure and use of their BNA if they do not make this affirmative request. LECs should also inform their unlisted and nonpublished customers that they have a right to request that their BNA not be disclosed, and advise those customers that the presumption in favor of consent for disclosure will begin 30 days after those customers receive those notices.[15]

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[14] *Implementing The Telephone Consumer Protection Act of 1991*, 7 FCC Rcd 8752, 8770 (1992). *See also Eimco Div. v. United Pac. Ins. Co.*, 710 P.2d 672 (Idaho Ct. App. 1985) (in a contractual setting, silence is accepted as assent where there is already an existing business relationship between a contractor and a subcontractor).

[15] *Local Exchange Carrier Validation and Billing Information for Joint use Calling Cards*, 8 FCC Rcd 8798, 8810 (1993). This decision eliminated on reconsideration a requirement that unlisted and nonpublished subscribers provide affirmative authorization prior to disclosure of their BNA.

Implied consent also recognizes that affirmative approvals are difficult to obtain for reasons other than a desire by customers to limit disclosure. As stated by the Commission, "[u]nder a prior authorization rule, a large majority of mass market customers are likely to have their CPNI restricted through inaction," denying "all but the largest business customers the one stop shopping benefits of integrated marketing ...."[16] In contrast to requiring affirmative authorization, an opt-in plan as proposed by GTE would assure that employment of CPNI is restricted only for those customers who want to limit the use of their CPNI. Other customers will not be deprived of the advantage of being informed of new products and services.

Finally, an opt-in approach strikes an appropriate balance between the privacy interests of individual customers and the interest of the public at large in having access to a greater variety of new and innovative telecommunications service offerings. The Commission undertook a similar balancing in its *Caller ID Report and Order*,[17] in which it weighed the fact that "the passage of calling party number does create risks of lost privacy."[18] against the fact that "passage of the calling party number can promote technological innovation and new applications that will foster economic efficiency and provide new employment, manufacturing and investment

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[16] *Computer III Remand Order*, 6 FCC Rcd 7571, 7610 & n.155 (1991).

[17] *Rules and Policies Regarding Calling Number Identification Service*, 9 FCC Rcd 1764 (1994).

[18] *Id.*, ¶ 7.

opportunities."[19] Ultimately, the Commission concluded that the economic benefits of passing the calling party number outweighed the privacy costs, *provided* that a mechanism that was not "difficult to invoke" was available to protect the privacy of callers who wished to keep their numbers private.[20] The mechanism proposed by GTE would be invoked by the customer easily and conveniently, and the customer would have the option of doing so at any time.

III. THE COMMISSION SHOULD ADOPT THE BROADEST POSSIBLE DEFINITION OF "TELECOMMUNICATIONS SERVICE" FOR PURPOSES OF SECTION 222(C)(1).

The Commission properly recognizes that an unduly narrow definition of "telecommunications service" for purposes of Section 222 might become untenable as "changes in telecommunications technology and regulation . . . allow carriers to provide more than one traditionally distinct service . . . ."[21] As entry barriers are removed and consumer demand and technology evolve, an overly restrictive definition would prevent carriers from marketing integrated service packages and frustrate consumer desires for one-stop shopping.[22] Indeed, even as the rules in

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[19] *Id.*, ¶ 8.

[20] *Id.*, ¶ 46.

[21] *NPRM*, ¶¶ 22-23.

[22] The advantages of one-stop shopping have been amply recognized by the FCC and the courts. *See SBC Communications, Inc. v. FCC*, 56 F.3d 1484, 1494 (D.C. Cir. 1995); *People of the State of California v. FCC*, 39 F.3d 919, 931 (9th Cir. 1994), *cert. denied*, 115 S. Ct. 1427 (1995).

this proceeding are being promulgated, the lines between the Commission's proposed categories are being blurred. Examples of this blurring include: (1) the Commission's proposal to allow CMRS carriers to provide fixed local loop service;[23] (2) interexchange carriers moving into the local exchange market, first through resale, and eventually as facilities-based providers;[24] and (3) LEC entry into long distance markets. As carriers integrate their service offerings, the variety of services proliferates, and competition in the local and long distance markets intensifies, unwarranted restrictions on information flow will increasingly harm both carriers and customers.

Against this background, all telecommunications services should ideally be considered as falling within a single category for purposes of Section 222(c)(1). If the Commission nonetheless believes that the statute anticipates some initial division of services into separate baskets, GTE would support the temporary establishment of local (including short-haul toll) and long distance categories. However, the Commission should be receptive to CPNI-related forbearance petitions submitted pursuant to new Section 10 of the Communications Act, which seek to eliminate

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[23] *See Amendment of the Commission's Rules To Permit Flexible Service Offerings in the Commercial Mobile Radio Services*, FCC 96-17 (Jan. 25, 1996) (Notice of Proposed Rule Making).

[24] *See* AT&T Comments, CC Docket 96-98 (May 16, 1996) (stating AT&T's intention to provide local exchange service); MCI Comments, CC Docket 96-98 (May 16, 1996) (stating MCI's intention to provide local exchange service); *Telephony*, Communications Daily, Dec. 20, 1995 (AT&T filing applications with Maryland PSC to enter local exchange market through resale).

those categories. The Commission should not establish a separate CMRS category.[25] CMRS services are simply wireless local and long distance offerings. As wireless and wireline technologies continue to converge, and CMRS providers begin offering wireless local loop, wireless Internet access, and similar products, an artificial distinction between landline and CMRS offerings would rapidly become untenable. Moreover, such a distinction would discourage the provision of innovative, integrated services such as GTE's Tele-Go® offering.

In addition, the Commission should resist any suggestion that further disaggregation of the local and long distance service categories is required. Any such disaggregation would unduly restrict the ability of carriers to use their proprietary customer data for legitimate business purposes, and accordingly would raise serious constitutional questions.[26]

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[25] In addition, the Commission should not hold that information obtained in the provision of a telecommunications service cannot be used to market CPE or information services. *See NPRM*, ¶ 26. Such a restriction would be contrary to the public interest; consumers benefit when CPE and enhanced services are marketed jointly with basic services, as when cellular carriers provide reduced-cost handsets in conjunction with transmission service. Moreover, Section 222 does not require that CPE and enhanced services be artificially divorced from underlying basic services. Indeed, Section 222(c)(1)(B) supports integrated treatment of such offerings, by permitting the use of CPNI in the provision of services that are necessary to, or used in, the provision of the telecommunications service. Accordingly, CPE and information services should be considered as falling within a category of telecommunications service with which they are used.

[26] It is a well-established canon of statutory interpretation that "statutes will be construed to defeat administrative orders that raise substantial constitutional

(continued...)

As a matter of Fifth Amendment law, the Takings Clause[27] prohibits the FCC from placing undue restrictions on the manner in which carriers can use their own property. Proprietary data gathered by a carrier about its own customers falls into the general category of trade secrets and therefore represent a constitutionally cognizable property interest.[28] Thus, while CPNI may be "regulated to a certain extent," any federal or state rules that inordinately limit the use of this information would "go[] too far" and be "recognized as a taking."[29]

Takings jurisprudence can be divided into two classes of cases. First, regulations that "deny all economically beneficial or productive use of [property]" represent per se takings, and are deemed unconstitutional without further inquiry.[30] Second, if a regulation does not "deny all economically beneficial" use of a piece of property to its owner, it is subjected to a two-part test which analyzes: (1) "the economic impact of the regulation on the claimant and, particularly, the extent to

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[26](...continued)
questions." *Bell Atlantic Telephone Companies v. FCC*, 24 F.3d 1441, 1445 (D.C.Cir. 1994).

[27] "[N]or shall private property be taken for public use, without just compensation." U.S. Const. Amend. V.

[28] *See Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1002-03 (1984) ("This general perception of trade secrets as property is consonant with a notion of 'property' that extends beyond land and tangible goods and includes the products of an individual's 'labour and invention'") (quoting 2 W. Blackstone, Commentaries).

[29] *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922).

[30] *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1015 (1992).

which the regulation has interfered with distinct investment-backed expectations"; and (2) "the character of the governmental action" (*e.g.* direct physical invasions are typically deemed per se violations).[31]

A strong argument can be made that permitting a carrier to use CPNI to market only the precise offering that it already provides to a customer denies the carrier "all economically beneficial or productive use" of this information. This is so because a special value of CPNI lies in its enabling the carrier to furnish a broad range of services to meet the needs of the customers. As a minimum, stringent limitations on the use of CPNI would certainly interfere with investment-backed expectations. Without the ability to market a wide range of new services to existing customers, businesses would have great difficulty growing. Moreover, investors expect businesses to utilize all of their assets to produce revenue; not allowing carriers to make the most productive use of CPNI would be inconsistent with these expectations.

As a matter of First Amendment law, the ability of a business to communicate with its customers is constitutionally protected commercial speech. The Supreme Court has held that, because commercial speech is vital to the nation's economic well-being, it must be given substantial protections:

> So long as we preserve a predominantly free enterprise economy, the allocation of our resources in large measure will be made through numerous

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[31] *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104, 124 (1978).

> private economic decisions. It is a matter of public interest that these decisions, in the aggregate, be intelligent and well informed. To this end, the free flow of commercial information is indispensable.[32]

The Court has likewise stated that "[s]pecial concerns arise from 'regulations that entirely suppress commercial speech in order to pursue a non-speech related policy,'" and "'special care' should attend the review of such blanket bans."[33]

A narrow interpretation of "telecommunications service" would place Section 222 squarely in conflict with the rule of law set forth in *44 Liquormart.* Particularly if combined with an affirmative consent requirement, such an interpretation would undermine the ability of carriers effectively to inform customers about new or additional services -- a form of speech that is plainly part of "the free flow of commercial information,"[34] and therefore is constitutionally protected. Further, according to the Commission's own analysis, the rules implementing Section 222 "pursue a non-speech related policy"[35] of addressing "both privacy and competitive concerns."[36] Thus, narrowly constraining carriers' use of CPNI to contact their own

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[32] *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 765 (1976).

[33] *44 Liquormart, Inc. v. Rhode Island*, No. 94-1140, slip op. at 13 (S. Ct. May 13, 1996) (quoting *Central Hudson Gas and Electric Corp. v. Public Service Comm'n*, 447 U.S. 557, 566 n.9 (1980)).

[34] *Virginia Pharmacy*, 425 U.S. at 765.

[35] *44 Liquormart*, slip op. at 13.

[36] *NPRM*, ¶ 9.

customers would represent an impermissible blanket ban on commercial speech. The Commission accordingly should interpret "telecommunications service" no more narrowly than it has suggested in the *NPRM*.

IV. DUPLICATIVE *COMPUTER III* CPNI REQUIREMENTS SHOULD BE ELIMINATED.

In the *Computer III* proceeding, the Commission adopted CPNI rules for AT&T and the BOCs, which later were extended to GTE. Specifically, those carriers must: (1) continue to provide annual written notification to customers about their privacy rights before using their CPNI to market enhanced services; (2) obtain prior written authorization from customers with more than twenty lines prior to using this CPNI to market enhanced services; and (3) maintain various FCC-approved mechanisms to prevent unauthorized internal access to CPNI.[37] The *NPRM* suggests that these rules should remain in effect even following adoption of regulations to implement Section 222(c).[38]

GTE disagrees with this analysis.[39] The "opt in" procedure proposed by GTE would obviate the need for carriers to provide annual written notification to customers about their privacy rights before using their CPNI to market enhanced services, since

[37] *Id.*, ¶ 39.

[38] *Id.* ¶ 46.

[39] As an initial matter, there is no basis for concern that elimination of the CPNI rules would adversely affect the other *Computer III* non-structural safeguards (*NPRM* ¶ 41). Each of these safeguards addresses a different concern, and each stands on its own.

such notifications would be provided under Section 222 in any event. Multiple notifications would be burdensome for the carrier and would confuse or annoy customers. Similarly, in light of the fact that customers with more than twenty lines can "opt in" to CPNI limitations with a single phone call or postcard, there is no need to obtain written authorization from customers with more than twenty lines before using their CPNI to market enhanced services.

Nor should the computerized information protection requirements be retained for only a few LECs.[40] These procedures were intended to address privacy concerns, which arise in equal measure regardless of the size or perceived market power of the carrier. In an increasingly competitive market, burdensome and asymmetric restrictions imposed on a subset of competitors are neither sustainable nor necessary. Quite simply, any carrier that does not honor its customers' wishes will rapidly lose subscribers.

Accordingly, the Commission should simply direct carriers to establish "effective safeguards" with respect to CPNI, while permitting each carrier to determine how best to discharge this obligation. Some carriers may wish voluntarily to retain or adopt the specific *Computer III* protection measures, but the underlying rule should be eliminated. Doing so would be fully consistent with Congress's desire to implement a "pro-competitive, deregulatory national policy framework designed to

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[40] *NPRM*, ¶ 35.

accelerate rapidly private sector deployment of advanced telecommunications and information technologies."[41]

V. RULES GOVERNING THE AVAILABILITY OF SUBSCRIBER LIST INFORMATION ARE UNNECESSARY.

The Commission inquires what rules, if any, are needed to implement Section 222(e), which requires that each local exchange carrier provide subscriber list information "on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions ...."[42] GTE concurs with the Yellow Pages Publishers Association that the statute is clear on its face, and that detailed rules are unwarranted and would be counter-productive.[43] As long as existing LEC policies and processes assure that subscriber information is provided to affiliated and unaffiliated publishers in a reasonable and non-discriminatory manner, there is no need for Commission intervention.

GTE particularly urges the Commission not to adopt rules defining "nondiscriminatory and reasonable" rates as rates set at incremental cost, as requested by the Association of Directory Publishers ("ADP"). Throughout the drafting and consideration of H.R.1555 and S.652, ADP tried to convince the House

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[41] H.R. Rep. No. 458, 104th Cong., 2d Sess. at 1 (1996).

[42] *NPRM*, ¶¶ 43-46.

[43] *See* Comments of Yellow Pages Publishers Association, CC Docket No. 96-115 (filed June 11, 1996) ("YPPA Comments"). GTE endorses the positions taken in the YPPA Comments.

Telecommunications Subcommittee, the Senate Commerce Committee, and the Conference Committee to "clarify" that reasonable rates means rates based on incremental cost. Each time, ADP failed. ADP was similarly unsuccessful in engineering a colloquy on the Senate floor to "spin" the language of Section 222(e) in the direction it desired. Its effort to obtain such relief from the Commission is therefore patently unsupportable.[44]

In reality, Congress made it clear that the reasonable cost standard was intended to recover more than just the marginal cost of providing subscriber list information to independent publishers. The House Commerce Committee report, for example, explained that the House predecessor to Section 222(e):

> meets the needs of independent publishers for access to subscriber data on reasonable terms and conditions, while at the same time ensuring that the telephone companies that gather and maintain such data are fairly compensated for the value of the listings.[45]

Thus, as Congress recognized, rates for subscriber list information must also allow LECs to recover the costs of collecting and maintaining the information and must recognize the value of the information. Rules that artificially restrict rates to incremental cost would therefore violate congressional intent.

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[44] Letter from Philip L. Verveer, counsel for ADP, to A. Richard Metzger, Deputy Bureau Chief, Common Carrier Bureau, dated April 4, 1996. In addition, as detailed in the YPPA Comments, the examples of "abuses" cited by ADP are isolated and outdated, and do not provide evidence of a pervasive problem requiring regulatory intervention.

[45] H.R.Rep. No. 104-204, Part I, 104th Cong., 1st Sess. 89 (1995).

VI. CONCLUSION

The Commission should adopt an "opt in" plan for restricting the use of CPNI. Under this plan, carriers would inform customers of their option to restrict carrier use of the customer's CPNI, and give customers 30 days to exercise this option. Upon expiration of that period, and indefinitely thereafter so long as the customer has not invoked the CPNI restriction, the carrier may treat that customer as having approved employment of its CPNI by the carrier and its affiliates, as described in the carrier's notification. In addition, the Commission should interpret the term "telecommunications service" in Section 222(c)(1) as broadly as possible, and should not establish a separate category for CMRS. The Commission also should eliminate the *Computer III* CPNI rules, which are counter-productive and no longer necessary in light of the new Section 222 requirements. Finally, the Commission should not adopt detailed rules regarding provision of subscriber list information, and should reject requests that such information be provided at rates based on incremental cost.

Respectfully submitted,

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